

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANGEL BURR,

Plaintiff,

v.

EVERGREEN PROFESSIONAL  
RECOVERIES, INC.,

Defendant.

Case No. C19-949RSM

ORDER RE: MOTIONS FOR SUMMARY  
JUDGMENT

This matter comes before the Court on the parties' Motions for Summary Judgment. Dkts. #10 and #11. For the reasons stated below, the Court GRANTS IN PART Plaintiff Angel Burr's Motion for Partial Summary Judgment and GRANTS IN PART AND DENIES IN PART Defendant Evergreen Professional Recoveries, Inc. ("Evergreen")'s Motion.

**I. BACKGROUND**

Defendant Evergreen filed a consumer debt-collection lawsuit in Pierce County District Court against Plaintiff Angel Burr (at that time Angel McClure) for alleged medical debts. These debts were recorded in 23 "accounts," ranging from \$9.17 to \$1,097.69, for medical services provided by Group Health Cooperative and/or Kaiser Permanente. Dkt. #11-2 at 8-11.

1 The parties settled the lawsuit on April 18, 2017, and Defendant Evergreen now admits that the  
2 underlying debts are no longer owed. *See* Dkt. #11-2 at 12–14, Dkt. #10-2 at 5–6.

3 In December of 2018, Ms. Burr reviewed her credit reports and discovered that  
4 Evergreen was still issuing negative reporting related to these settled debts. Dkt. #10-1 (“Burr  
5 Decl.”) at ¶¶ 2–3. Specifically, EPR reported that Ms. Burr owed \$690 under account number  
6 6007494, and that she owed \$667 under account number 6577778. *Id.* Evergreen reported the  
7 debts numerous times over the course of nine months.  
8

9 Ms. Burr sent a letter to Evergreen noting that the accounts had been resolved, asking  
10 that Evergreen “delete these entries immediately,” attaching the April 2017 settlement  
11 agreement as proof for her request. *See id.* at ¶¶ 5-6; Dkt #11-2 at 35. The letter was dated  
12 December 27, 2018, but mysteriously postmarked in February of 2019. Dkt. #11-2 at 34–35.  
13

14 Evergreen says its staff “deleted our reporting for the 494 and 778 Accounts” in  
15 February in response to Ms. Burr’s letter. Dkt. #11-2 at 4. Evergreen then responded to the  
16 letter on March 13, 2019, assuring Ms. Burr that it had corrected the error. *Id.* at 36. However,  
17 two days later Evergreen “erroneously re-reported the 494 and 778 Accounts.” *Id.* at 5. This  
18 was because Evergreen “reassigned the 494 and 778 Accounts to a different desk”—Evergreen  
19 admits this error. Dkt. #11 at 5. Evergreen continued to report both accounts, affecting Ms.  
20 Burr’s credit, for several months. Burr Declaration at ¶ 7; Dkt. #10-2 at 16–17.  
21

22 Evergreen was given notice of this lawsuit on May 14, 2019, ten days before it deleted  
23 the false reporting. *See* Dkt. #10-2 at 16–17 and 21. It was this May contact—including the  
24 threat of legal action—that finally led Evergreen to correct the reporting, including “cod[ing]  
25 these accounts so they could never again be reported to the credit reporting agencies.” Dkt.  
26 #11-2 at 5.  
27  
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1 This lawsuit was filed in King County Superior Court on May 21, 2019, and later  
 2 removed to this Court. Dkt. #1-2. Ms. Burr brings claims against Evergreen under the Fair  
 3 Debt Collection Practices Act (“FDCPA”) the Washington Collection Agency Act (“WCAA”),  
 4 Washington’s Consumer Protection Act (“CPA”), and for breach of contract.

5 Ms. Burr’s now moves for partial summary judgment on liability under the FDCPA and  
 6 WCAA. Dkt. #10. Ms. Burr does not move for the Court to determine damages at this time.  
 7 Evergreen moves for summary judgment dismissal of all of Ms. Burr’s claims, arguing, *inter*  
 8 *alia*, that “its inadvertent inclusion of the 494 and 778 Accounts in its credit reporting was not a  
 9 material violation of the FDCPA” and that it is entitled to the bona fide error defense. Dkt. #11  
 10 at 2. Evergreen also argues that it did not violate the WCAA by attempting to collect on the  
 11 debts at issue and that its actions did not breach the 2017 settlement agreement.  
 12

## 14 II. DISCUSSION

### 15 A. Legal Standard for Summary Judgment

16 Summary judgment is appropriate where “the movant shows that there is no genuine  
 17 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
 18 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are  
 19 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at  
 20 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of  
 21 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
 22 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*  
 23 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).  
 24

25 On a motion for summary judgment, the court views the evidence and draws inferences  
 26 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*  
 27  
 28

1 *Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable  
2 inferences in favor of the non-moving party. *See O'Melveny & Meyers*, 969 F.2d at 747, *rev'd*  
3 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient  
4 showing on an essential element of her case with respect to which she has the burden of proof"  
5 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

### 6 **B. Analysis**

7  
8 The Fair Debt Collection Practices Act was enacted to protect consumers from improper  
9 or abusive debt collection efforts. 15 U.S.C. § 1692. The FDCPA is a strict-liability statute  
10 which "makes debt collectors liable for violations that are not knowing or intentional." *Reichert*  
11 *v. Nat'l Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008); *see also McCollough v. Johnson,*  
12 *Rodenburg & Lauinger, LLC*, 637 F.3d 939, 948 (9th Cir. 2011). "A single violation of any  
13 provision of the Act is sufficient to establish civil liability under the FDCPA." *Taylor v. Perrin,*  
14 *Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997). The FDCPA is a remedial  
15 statute construed liberally in favor of the consumer. *Tourgeman v. Collins Fin. Servs, Inc.*, 755  
16 F.3d 1109, 1118 (9th Cir. 2014); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d  
17 1162, 1176 (9th Cir. 2006) ("we wish to reinforce that the broad remedial purpose of the  
18 FDCPA is concerned primarily with the likely effect of various collection practices on the  
19 minds of unsophisticated debtors."). Section 1692e prohibits the use by a debt collector of "any  
20 false, deceptive, or misleading representation or means in connection with the collection of any  
21 debt." *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir. 2010). Section 1692e(8)  
22 prohibits a debt collector from "[c]ommunicating or threatening to communicate to any person  
23 credit information which is known or which should be known to be false..."

1           There is no meaningful dispute that Evergreen is a debt collector under the FDCPA. *See*  
2 15 U.S.C. § 1692a(6); Dkt. #10 at 5; Dkt. #11 at 2. The Court finds that Evergreen's reporting  
3 of Ms. Burr's debts was connected to its prior attempts to collect on that debt for purposes of  
4 satisfying § 1692e.

5           Evergreen's own admissions show that it erroneously reported a debt known to be false.  
6 This alone can lead to liability under § 1692e, and the Court need not consider other sources of  
7 liability under the FDCPA. The fact that Evergreen continued to report the debt multiple times  
8 for months after Ms. Burr sent it a copy of the settlement agreement is significant and makes  
9 this a material breach of the FDCPA in the eyes of the Court. *See Tourgeman v. Collins Fin.*  
10 *Servs., Inc.*, 755 F.3d 1109, 1121 (9th Cir. 2014) (materially false statements are those that  
11 could "cause the least sophisticated debtor to suffer a disadvantage in charting a course of action  
12 in response to the collection effort."). Evergreen argues that the breach was not material  
13 because other debts may have also negatively affected Ms. Burr's credit score and because she  
14 has "provided no evidence... that her FICO score would have arisen above a substandard score  
15 but for the erroneous reporting of the 494 and 778 accounts." Dkt. # 11 at 7–8. Ms. Burr's  
16 difficulties with other creditors does not reduce the harm caused by Evergreen to her credit  
17 score, however small, nor does Evergreen establish that a significant change in credit score is  
18 required for materiality. Evergreen's error disadvantaged Ms. Burr by requiring her to make  
19 multiple efforts to correct the reporting.

20           The Court's analysis thus turns to the bona fide error defense, an affirmative defense  
21 claimed by Evergreen. Under 15 U.S.C. § 1692k(c), a defendant asserting "bona fide error"  
22 bears the burden of establishing that (1) it violated the FDCPA unintentionally; (2) the violation  
23 resulted from a bona fide error; and (3) it maintained procedures reasonably adapted to avoid  
24

1 the violation. *McCollough*, 637 F.3d at 948 (citation omitted). As to the third element: “If the  
2 bona fide error defense is to have any meaning in the context of a strict liability statute, then a  
3 showing of ‘procedures reasonably adapted to avoid any such error’ must require more than a  
4 mere assertion to that effect. The procedures themselves must be explained, along with the  
5 manner in which they were adapted to avoid the error.” *Reichert*, 531 F.3d at 1007 (citation  
6 omitted).  
7

8 The Court has reviewed the briefing of the parties and the declaration of Evergreen  
9 president Monica Severtsen and finds there is no evidence for a reasonable juror to conclude  
10 that Evergreen maintained a specific procedure adapted to avoid the initial reporting error.  
11 Instead, there is only evidence that Evergreen has a system of coding accounts as disputed or  
12 paid off. *See* Dkt. #11-1. There is no evidence that Evergreen has procedures to double check  
13 coding before it is implemented, or to audit the coding after it has been completed. Evergreen  
14 has also failed to present evidence of a procedure adapted to avoid the second error, which  
15 occurred when the accounts changed “desks” and were “re-reported.” Accordingly, the Court  
16 finds Evergreen liable for violation of the FDCPA.  
17  
18

19 Evergreen’s actions did not violate the WCAA. RCW 19.16.250(21) prohibits the  
20 collection, or attempted collection, of any amounts not authorized by law. There is no evidence  
21 that Evergreen collected or attempted to collect on these debts; only that Evergreen reported the  
22 debts to credit agencies. Ms. Burr argues that “false reporting of a debt on a consumer’s credit  
23 report may prompt her to pay out of fear or confusion,” Dkt. #13 at 14, but this does not on its  
24 own transform Evergreen’s erroneous reporting into the more serious error of actively  
25 attempting to collect on the debt. Ms. Burr’s CPA claim is based solely on a violation of the  
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1 WCAA. *See* Dkt. #13 at 15–16. Accordingly, Ms. Burr’s WCAA and CPA claims will be  
2 dismissed.

3 The Court agrees with Evergreen that its actions did not breach the settlement  
4 agreement, which stated that Evergreen would not collect on the debts at issue but made no  
5 mention of credit reporting. Dkt. #11-2 at 12–14. This claim too is properly dismissed on  
6 summary judgment.  
7

### 8 **III. CONCLUSION**

9 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
10 finds and ORDERS:

- 11 1) Plaintiff Burr’s Motion for Partial Summary Judgment, Dkt. #10, is GRANTED IN  
12 PART. Defendant is liable under the FDCPA as stated above. The amount of  
13 damages remains an issue for trial.  
14  
15 2) Defendant Evergreen’s Motion for Summary Judgment, Dkt. #11, is GRANTED IN  
16 PART AND DENIED IN PART. Plaintiff Burr’s claims under the WCAA, CPA,  
17 and for breach of contract are DISMISSED.  
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19 DATED this 24<sup>th</sup> day of July, 2020.  
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22 

23 RICARDO S. MARTINEZ  
24 CHIEF UNITED STATES DISTRICT JUDGE  
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